

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 05/01/12	NUMBER 01.06.110
SUBJECT FREEDOM OF INFORMATION ACT - ACCESS TO DEPARTMENT PUBLIC RECORDS		SUPERSEDES 01.06.110 (05/15/00)	
		AUTHORITY MCL 4.359; 15.231 et seq.; 28.730; 423.504; 762.14; 771.14; 780.623; 791.229; 791.230a; Administrative Rule 28.5208	
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POLICY STATEMENT:

All written requests for public records in the Department's possession shall be processed under the Michigan Freedom of Information Act (FOIA) as set forth in this policy.

RELATED POLICY:

02.01.140 Human Resource Files

POLICY:

DEFINITIONS

- A. Public Record - A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This includes but is not limited to photographs, photocopies, drawings, video and audio tapes, computer data or documents retained on a computer, CD, DVD, and any other means of recording or retaining information. It does not include computer software.

GENERAL INFORMATION

- B. All public records in the Department's possession are subject to FOIA but may be exempt from disclosure. This includes public records in the Department's possession that are created by another agency (e.g., Department of Community Health, Federal Bureau of Prisons, jails) or by an entity under contract with the Department. However, public records that are possessed only by another agency or an entity under contract with the Department are not subject to a FOIA request received by the Department.
- C. Except if the request is from a prisoner and as set forth in Paragraph D, any written request for a public record is considered to be a FOIA request unless the requestor specifically states in writing that the request is not being made under FOIA. A written request for information also is considered to be a FOIA request if the request indicates it is being submitted under FOIA. A written request includes a writing transmitted by facsimile machine, e-mail, or any other electronic means.
- D. The following are generally not considered to be FOIA requests unless the requestor specifically states in writing that the request is being made under FOIA:
1. A request from a federal, state, or local governmental agency, including a court or law enforcement agency. A request from the Department of Attorney General shall be referred to the appropriate litigation coordinator.
 2. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents). All discovery requests shall be referred to the appropriate litigation coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities".
 3. A request for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer). Such

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requests shall be referred to the appropriate Human Resource office for processing.

4. A request from an employee for copies or inspection of his/her personnel or medical file. Such requests shall be referred to the appropriate Human Resource office and processed as set forth in PD 02.01.140 "Human Resource Files".
 5. A request from a collective bargaining unit made pursuant to its contract. Such requests shall be referred to the appropriate Human Resource office for processing.
 6. Documents required to be produced by a subpoena or other court order. Such requests shall be referred to the appropriate litigation coordinator.
 7. A request from an educational institution for a transcript of a prisoner's education record.
 8. A request from a news media representative unless the request is for copies of several Department documents. The Administrator of the Executive Bureau or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from a news media representative.
 9. A request from legislative staff unless the request is for copies of several Department documents. The Administrator of the Executive Bureau or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from legislative staff.
- E. Department employees are entitled to make requests under FOIA. However, such requests shall not be made while on Department time or while using Department resources, including its computers and office supplies. Any known misuse of Department time or resources is to be reported to the employee's supervisor.

PRISONER REQUESTS FOR DOCUMENTS

- F. Under MCL 15.231(2) and 15.232(c), prisoners are not entitled to make FOIA requests. Prisoners also have no right to appeal or file suit under FOIA if a request for public records is denied. Therefore, prisoner requests for public records shall not be processed as FOIA requests but instead responded to by staff in the same manner as any other correspondence, with requested documents provided as appropriate.
- G. Prisoners may receive copies of documents about their medical care as set forth in OP 03.04.108-B "Prisoner Access to Medical Records".
- H. Upon request, a prisoner shall be provided with a copy of the hearing investigation compiled for his/her Class I misconduct hearing, except for those documents which have been determined by the hearing officer to be confidential. Such requests shall be made to the hearing investigator at the facility where the hearing occurred.

FOIA COORDINATORS

- I. The Manager of the FOIA Section in the Office of Legal Affairs is the FOIA Coordinator for the Department. The Department's FOIA Coordinator or designee is responsible for responding to requests received in Central Office and requests for documents in prisoner files in storage, except for the prisoner health record.
- J. Local FOIA coordinators shall be designated to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests received at the following locations:
 1. At each Correctional Facilities Administration (CFA) institution, as identified by the Warden. A separate FOIA Coordinator may be identified for the Record Office and Human Resource

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Office.

2. At each CFA Regional Office, as identified by the Regional Prison Administrator (RPA).
 3. At each Bureau of Health Care Services (BHCS) Regional Office as identified by the appropriate Regional Health Care Administrator and at Duane L. Waters Health Center (DWH) as identified by the Warden of the Charles E. Egeler Reception and Guidance Center (RGC). This shall include a local FOIA coordinator for requests for records in prisoner/parolee health records in storage. Other local health care FOIA coordinators may be identified as needed by the BHCS Administrator or designee.
 4. At each Field Operations Administration (FOA) Regional and Area Office, as identified by the appropriate Regional Administrator or Area Manager.
 5. At each Residential Reentry Program facility, as identified by the FOA Deputy Director or designee.
- K. Each FOIA coordinator shall maintain monthly statistics of the number of FOIA requests received and processed, including the amount of funds billed and collected. The local FOIA coordinator shall forward the statistics to the Department FOIA Coordinator or designee at the end of each calendar year. The Department's FOIA Coordinator shall ensure Department-wide statistical reports are compiled at least annually.
- L. Each FOIA coordinator shall maintain a copy of all FOIA requests received and responses. These documents shall be retained in accordance with the Department's Retention and Disposal Schedule, but for at least one calendar year from the date of response.
- M. A Response to Request for Public Records - FOIA form (CSH-479) shall be used to respond to all FOIA requests unless otherwise directed by the Department FOIA Coordinator or designee. A written notice responding to the request shall be provided to address issues not covered by the form (e.g., search fees).
- N. Whenever a FOIA request is received from an attorney, the local litigation coordinator shall be contacted to determine if there is pending litigation regarding the subject of the request. If there is pending litigation, the Department FOIA Coordinator shall be contacted for directions on how to proceed. A copy of the request and the response shall be forwarded to the local litigation coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities".
- O. Questions regarding FOIA requests shall be directed to the Department's FOIA Coordinator or designee.

PROCESSING FOIA REQUESTS

- P. A FOIA request received by an employee shall be referred before the end of the business day to the FOIA coordinator for the employee's work site. The FOIA coordinator shall respond to the request within five business days after receipt by the Department. A request received by facsimile machine or e-mail is considered received on the business day following the date of transmission. In the response, the FOIA coordinator shall:
1. Grant the request;
 2. Deny the request;
 3. Grant the request in part and deny the request in part; or
 4. Take a ten business day extension. In such cases, the requestor shall be notified in writing of

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the reason for the extension and the expiration date of the extension.

- Q. The FOIA coordinator shall review the request and determine which records in the Department's possession are responsive to the FOIA request. The exact name of the record is not required to be provided if it can reasonably be determined by the description provided what is being requested. A document is not required to be created to respond to a FOIA request if the record requested does not exist.
- R. The FOIA coordinator shall review the documents responsive to the request to ensure information exempt from disclosure is not provided. If only a portion of a document is exempt, the exempt portion is to be redacted and only the non-exempt portion of the document disclosed. The FOIA coordinator shall ensure redacted portions of a document are not legible on the copy provided.
- S. Only those exemptions authorized under FOIA shall be used. If more than one exemption applies to a particular request, all relevant exemptions should be indicated when responding to a FOIA request unless the document is statutorily exempt from disclosure. An explanation as to what was exempted and the reason for the exemption shall be provided.

REQUESTS FOR EMPLOYEE PERSONNEL RECORDS

- T. Pursuant to MCL 791.230a, the home addresses, home telephone numbers, and personnel records of Department employees are exempt from disclosure under FOIA. For purposes of this exemption, personnel records include all records maintained on an employee as a result of employment with the Department. This includes but is not limited to personnel files, investigatory records relating to an employee, complaints filed by or against an employee, and time and attendance records.

REQUESTS FOR INFORMATION ON FILLING DEPARTMENT POSITIONS

- U. Although most records retained by the Department regarding the filling of Department positions are exempt from disclosure, each request must be reviewed to determine what records and/or information may be disclosed. Information that may be released under FOIA unless otherwise exempt from disclosure (e.g., telephone numbers, home addresses, Social Security numbers) include but is not limited to the following:
 1. The names of all applicants.
 2. The resume of the requestor, assuming s/he applied for the position.
 3. The names of those applicants interviewed for the position, ensuring they are not presented in the order in which they were ranked.
 4. The job posting.

FOIA EXEMPTIONS

- V. The exemptions allowed under FOIA are expressed in general language which must be applied to the specific public record requested. It is impractical to list all information or documents that may be exempt from disclosure; therefore, local FOIA coordinators must be familiar with all FOIA exemptions. Often, more than one exemption may apply.

General Exemptions

- W. The following are some of the FOIA exemptions which are most frequently used and examples of information to which the exemptions may apply:
 1. Information of a personal nature if public disclosure of the information would constitute a clearly

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unwarranted invasion of an individual's privacy. Section 13 (1)(a).

Examples: Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims' requests to receive information pursuant to PD 01.06.120 "Victim Notification" and the Department's response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.

2. A public record that, if disclosed, would prejudice the ability to maintain the physical security of a correctional facility unless the public interest in disclosure outweighs the public interest in non-disclosure. Section 13(1)(c).

Examples: Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of a fixed monitoring device; document determined to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

3. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule. Section 13(1)(h).

Examples: Psychiatric and psychological information unless a release is provided; medical records; however, the request shall be forwarded to the Health Unit Manager for processing under the Medical Records Access Act if a release is provided.

4. Communications and notes of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency decision of policy or action. This exemption only applies if the public interest of encouraging frank communications between officials and employees clearly outweighs the public interest in disclosure. Section 13(1)(m).

Examples: Information in post-incident reviews and investigations that is not factual in nature; agent recommendations on parole revocation for violations.

5. Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body. Section 13(1)(u).

Examples: Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of a fixed monitoring device.

6. Records or information relating to a civil action in which the requesting party and the Department are parties. Section 13(1)(v). This includes civil court actions in which the Department is representing an employee being sued.

7. Information or records that would disclose the Social Security number of an individual. Section 13 (1)(w). This information shall not be disclosed even if a release is provided.

Statutory Exemptions

- X. Section 13(1)(d) of FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. When using this exemption, it is necessary to identify the specific statute authorizing the exemption. The following are examples of information exempt under Section

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13(1)(d) and the applicable statute:

1. Records and reports of investigations made by a probation officer, including presentence investigation reports. (MCL 791.229).
2. The address and telephone number of a victim who has requested to receive information pursuant to PD 01.06.120 "Victim Notification". (MCL 780.769).
3. Victim statements submitted for consideration by the Parole Board pursuant to MCL 780.771.
4. Any information of the disposition of criminal charges and assignment as a youthful trainee unless youthful trainee status is revoked and the offender is subsequently convicted of the offense. (MCL 762.14).
5. Any information received through the Law Enforcement Information Network (LEIN), including records of criminal charges which did not result in a conviction. (MCL 28.214).
6. Quality assurance reviews (e.g., "peer reviews") conducted by BHCS. (MCL 331.533).
7. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation. (MCL 4.359).
8. A record ordered to be set aside ("expunged") if the Department has received notice of the set aside. (MCL 780.623).
9. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex Offenders Registration Act. (MCL 28.730).
10. Information regarding the diagnosis, prognosis, or treatment of an offender involved in a substance abuse education or treatment program. Unless a release is provided by the offender which specifically authorizes release of this information. (48 USC 290dd-3).

FEES

- Y. All FOIA requestors shall be charged 25 cents per page for each written document provided plus the cost of postage unless otherwise directed by the Department FOIA Coordinator or designee. The actual cost of duplication shall be charged for copies of non-written documents, such as computer and cassette tapes. If a portion of a document must be redacted and the document recopied prior to production, the requestor shall be charged only for the copy provided.
- Z. A fee may not be charged for the cost of search, review, examination, and the separation of exempt from non-exempt information unless failure to charge the fee would result in an unreasonably high cost to the Department. If assessed, the fee shall be charged at the hourly wage of the lowest-paid employee capable of retrieving the information necessary to comply with the request. The hourly wage includes the cost of benefits paid by the State. Such fees are not to be charged without first contacting the Department's FOIA Coordinator or designee for approval and direction on how to proceed.
- AA. The Department may waive or reduce fees if the Department determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor. A fee that totals \$10.00 or less, including postage, shall be waived. Other fees shall be waived or reduced pursuant to this paragraph only with approval of the Department FOIA Coordinator or designee.
- BB. A requestor shall not be charged for the first \$20.00 of fees assessed per request, including any fees waived under Paragraph AA, upon submission of a current affidavit verifying that s/he is receiving public

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assistance or, if not receiving public assistance, sufficiently stating facts showing an inability to pay the cost due to indigency. Questions regarding whether fees should be waived pursuant to this paragraph are to be directed to the Department's FOIA Coordinator or designee.

- CC. Whenever a fee is charged, the FOIA response shall specify the amount owed and indicate that the records will be provided after payment is received in full. If the amount owed exceeds \$50.00, exclusive of any waived amounts, a 50% good faith deposit may be required before processing begins. Once the good faith deposit is received, the request shall be processed. Upon completion of processing, the requestor shall be billed for the balance owed, which must be paid before the documents are provided to the requestor. A requestor who does not pay the balance owed will not be provided with the documents requested.

INSPECTION

- DD. When inspection of public records is requested in writing under FOIA, a reasonable opportunity for inspection of the non-exempt records must be allowed during normal business hours. The local FOIA coordinator must ensure that any exempt information is redacted prior to the inspection.
- EE. A fee shall be charged a requestor to inspect public records only as set forth below:
1. For the search, review, examination, and the separation of exempt from non-exempt information as set forth in Paragraph Z.
 2. With approval of the Department FOIA Coordinator or designee, for the time spent by staff monitoring an inspection that is necessary to protect the original record and to prevent excessive and unreasonable interference with the discharge of Department functions. The fee shall be charged at the hourly rate of the lowest-paid employee capable of monitoring the inspection. The hourly rate shall include the cost of benefits paid for the employee by the State.
 3. With approval of the Department FOIA Coordinator or designee, for copies necessary to protect the original record as provided for under Section 3(3) of FOIA.
 4. For a copy made in order to redact a portion of the original that is exempt.

APPEAL OF DENIAL UNDER FOIA

- FF. A requestor whose FOIA request has been denied in total or in part may appeal the denial to the Director. The appeal must be submitted in writing and is to be mailed to attention of the Administrator of the Office of Legal Affairs. The appeal must be specifically identified as a FOIA appeal and state the reasons for reversal of the denial. The Director will respond to the appeal in accordance with MCL 15.240.
- GG. A requestor may appeal the Department's final determination to deny a FOIA request by commencing an action in the circuit court within 180 calendar days after that final determination is made.

PROCEDURES

- HH. Wardens and the FOA Deputy Director shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed.

AUDIT ELEMENTS

- II. A Primary Audit Elements List has been developed and is available on the Department's Document

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Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: DHH 04/17/12